

Federal Communications Commission

DA 00-2111

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. <u>99-284</u>
Table of Allotments,)	RM-9697
FM Broadcast Stations.)	
(Galveston and Missouri City, Texas))	

FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: September 13, 2000

Released: September 15, 2000

Comment Date: November 7, 2000

Reply Comment Date: November 22, 2000

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a Notice of Proposed Rule Making issued in response to a Petition for Rule Making filed by KQQK License, Inc. ("KQQK License"), licensee of Station KQQK-FM, Channel 293C, Galveston, Texas. 14 FCC Rcd 15406 (1999). KQQK License filed Comments, Reply Comments, and Supplement to Reply Comments. Tichenor License Corporation filed Comments. The Notice proposed the reallocation of Channel 293C from Galveston to Missouri City, and modification of the Station KQQK license to specify Missouri City as the community of license.

2. KQQK License filed its request pursuant to Section 1.420(i) of the Rules which permits the modification of a station authorization to specify a new community of license without affording other interested parties an opportunity to file a competing expression of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community"), 4 FCC Rcd 4870 (1989); recon. granted in part, 5 FCC Rcd 7094 (1990). In support of its proposal, KQQK License contended that the adoption of its proposed reallocation would result in a preferential arrangement of allotments by providing Missouri City with its first local transmission service.¹ This would not deprive Galveston of its sole local service because FM Station KLTO and AM Stations KHCB and KGBC will continue to be licensed to Galveston.

3. On August 30, 2000, we adopted a Report and Order in MM Docket No. 99-26, DA 00-2057, released September 8, 2000, in which adopted an earlier counterproposal filed by Tichenor License Corporation. In that counterproposal, we substituted Channel 285C3 for Channel 285A at

¹ In reaching such a determination, we compare the existing versus the proposed arrangement of allotments using the FM priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1988). These FM allotment priorities are: (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

Rosenberg, Texas, reallocated Channel 285C3 to Missouri City, and modified the Station KOVA license to specify operation on Channel 285C3 at Missouri City. In order to accommodate that upgrade and reallocation, we also substituted Channel 287A for Channel 285A at Galveston, reallocated Channel 287A to Crystal Beach, Texas, and modified the Station KLTO license to specify operation on Channel 287A at Crystal Beach. In light of that action, the KQQK License proposal will no longer provide a first local service to Missouri City and will, in addition, be removing the remaining local FM service at Galveston. In view of the fact that the Notice in this proceeding specifically solicited comment on the KQQK License proposal as a first local service, we are issuing this Further Notice in order to afford KQQK License and other interested parties the opportunity to comment upon a proposed reallocation to Missouri City as a competitive service and whether this proposal is consistent with the provisions of Section 1.420(i) of the Rules and the FM allotment priorities. We will not entertain any counterproposals or competing expressions of interest for the proposed Channel 293C allotment at Missouri City.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Galveston, Texas	293C	-----
Missouri City, Texas	287A	287A, 293C

5. Interested parties may file comments on or before November 7, 2000, and reply comments on or before November 22, 2000. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W.; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Lawrence Roberts
Mary L. Plantamura
c/o Davis Wright Tremaine
1155 Connecticut Ave., NW, Suite 700
Washington, D.C. 20036

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the

Commission's Rules, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau